

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JACQUELINE M. WILLIAMSON and U.S. POSTAL SERVICE,
POST OFFICE, Indianapolis, IN

*Docket No. 01-521; Submitted on the Record;
Issued April 10, 2002*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

This case was previously on appeal before the Board. By decision dated March 6, 1996, the Board found that appellant had not established that her disability beginning July 16, 1991 was causally related to her April 27, 1974 or August 19, 1989 employment injuries or to factors of her employment. The Board also found that the Office did not meet its burden of proof to terminate appellant's authorization for medical treatment for her accepted right shoulder and low back conditions.¹

The Office referred appellant to Dr. Otto W. Wickstrom, who concluded in a February 26, 1999 report that appellant did not have residuals of her work-related right shoulder strain or her lumbar disc syndrome. On March 11, 1999 the Office referred Dr. Wickstrom's report to Dr. Mitesh V. Shah, a treating physician, and requested comments on it by April 11, 1999.

On April 15, 1999 the Office issued a notice of proposed termination of compensation on the basis that appellant had no residuals of her employment injuries.

In a report dated May 7, 1999, Dr. Shah stated that he "in no way made a claim that her work-related accident was the cause of her lumbar stenosis or was not the cause of her lumbar stenosis," and that he did "not feel that the lumbar disc syndrome at 5/1 led to the condition that she has developed although I absolutely have no way of proving or disproving this claim."

By decision dated August 12, 1999, the Office terminated appellant's entitlement to medical benefits on the basis that all residuals of her accepted injuries had resolved.

¹ Docket No. 94-995.

By letter dated August 11, 2000, appellant requested reconsideration stating that Dr. Shah's report did not mention her right shoulder, that Dr. Shah stated he could not prove or disprove her claim and that Dr. Wickstrom's report was questionable due to the restrictions he wrote down. Appellant stated that upon her request being accepted she would send further information on these points.

By decision dated August 16, 2000, the Office found that appellant's letter did not raise substantive legal questions or include new and relevant evidence, and that it was therefore insufficient to warrant review of the prior decision.

By letter to the Office dated November 16, 2000, appellant again requested reconsideration. By letter to the Board dated November 16, 2000, appellant requested an appeal. The Board docketed the present appeal on November 27, 2000.

By decision dated January 4, 2001, the Office found that appellant's November 16, 2000 request for reconsideration was not timely filed and did not demonstrate clear evidence of error.

The Board finds that the Office decision issued on January 4, 2001 is null and void, as it was issued while the case was on appeal before the Board regarding the same issue.²

The only Office decision before the Board on this appeal is the Office's August 16, 2000 decision finding that appellant's application for review was not sufficient to warrant review of its prior decision. Since more than one year elapsed between the date of the Office's most recent merit decision on August 12, 1999 and the filing of appellant's appeal on November 27, 2000, the Board lacks jurisdiction to review the merits of appellant's claim.³

The Board finds that the Office properly refused to reopen appellant's case for further review of the merits of her claim under 5 U.S.C. § 8128(a).

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with discretionary authority to determine whether it will review an award for or against compensation:

"The Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application. The Secretary, in accordance with the facts found on review may --

(1) end, decrease or increase the compensation awarded; or

(2) award compensation previously refused or discontinued."

Under 20 C.F.R. § 10.606(b)(2), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a specific point of law, by

² *Terry L. Smith*, 51 ECAB ____ (Docket No. 97-808, issued November 29, 1999) (order denying petition for reconsideration); *Douglas E. Billings*, 41 ECAB 880 (1990).

³ 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board be filed within one year of the date of the Office final decision being appealed.

advancing a relevant legal argument not previously considered by the Office, or by submitting relevant and pertinent new evidence not previously considered by the Office. Section 10.608(b) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements the Office will deny the application for review without reviewing the merits of the claim.

Appellant's August 11, 2000 request for reconsideration does not show that the Office erroneously applied or interpreted a specific point of law, does not advance a relevant legal argument not previously considered by the Office and was not accompanied by any new evidence. A claimant may not extend the one-year time limitation for filing a request for reconsideration by making such a request and subsequently (after the one year has expired) submitting additional argument or new evidence.⁴ As appellant's August 11, 2000 request for reconsideration did not meet the criteria of the Office's regulation, the Office properly refused to reopen the claim for further review of the merits of its August 12, 1999 decision.

The August 16, 2000 decision of the Office of Workers' Compensation Programs is affirmed. The Office's January 4, 2001 decision is set aside as null and void.

Dated, Washington, DC
April 10, 2002

Alec J. Koromilas
Member

David S. Gerson
Alternate Member

Michael E. Groom
Alternate Member

⁴ See *John B. Montoya*, 43 ECAB 1148 (1992).